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Before the
 Federal Communications Commission
 Washington, D.C. 20554

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MM Docket No. 92-34

In the Matter of

DEBRINE COMMUNICATIONS, INC.

Licensee of Station KBRs(AM)
 Springdale, Arkansas

Order to Show Cause Why the
 License for Station KBRs(AM),
 Springdale, Arkansas, Should
 Not be Revoked

and

File No. ARN-921127EC

In re Application for

Assignment of License
 of KBRs(AM) from
 DeBrine Communications,
 Inc., to Elvis L. Moody
 Springdale, Arkansas

ORDER

Adopted: August 3, 1993;

Released: August 10, 1993

By the Chief, Mass Media Bureau:

1. The Commission has before it an application for assignment of license of KBRs(AM), Springdale, Arkansas, from Debrine Communications, Inc. (Debrine) to Elvis L. Moody (Moody) filed by Moody on November 27, 1992. Also before the Commission is an *Order*, FCC 92M-518, released May 6, 1992, by the Chief, Administrative Law Judge, Joseph Stirmer, terminating the hearing proceeding in this docket and certifying the case to the Commission.

Background

2. On March 26, 1992, the Commission issued an *Order to Show Cause and Hearing Designation Order ("OSC")*, 7 FCC Rcd 2118 (1992) in which it ordered Debrine to show cause why its license to operate KBRs(AM) should not be revoked. The OSC was based on the fact that KBRs(AM), in apparent violation of Sections 73.1740(a)(4) and 73.1750 of the Commission's Rules, had been off the air without authority for an extended period of time and the licensee had not turned in its license. In his *Order*, the Presiding

Judge, pursuant to Section 1.92(c) of the Commission's Rules, terminated the proceeding because of the licensee's failure to file the requisite notice of appearance.

3. Commission records indicate that KBRs(AM) has been off the air without authority from the Federal Communications Commission since December 30, 1989. All correspondence, including the OSC, directed to Debrine's last known address has been returned by the U.S. Postal Service as undeliverable. In light of the foregoing, we conclude that Debrine has violated Sections 73.1740 and 73.1750 of the Commission's Rules and that Debrine is not qualified to remain the licensee of station KBRs(AM).¹

4. Moody requests that the Commission approve the assignment of the license to him from Debrine.² Moody contends that such action would be consistent with the Commission's recognition of the public interest in protecting innocent creditors of broadcast stations. *Citing*, *Second Thursday Corporation*, 22 FCC 2d 515 (1970), *reconsideration granted*, 25 FCC 2d 112 (1970) (*Second Thursday*). Moody provides a November 20, 1989, "Decree in Foreclosure" calling for a sale of Debrine's assets to satisfy its debt, in the amount of approximately \$238,000, to the station's former owner, Donrey, Inc. ("Donrey"). In addition, Moody provides a letter from Donrey's attorney stating that Donrey was the only bidder for KBRs(AM)'s assets and that its bid would leave a debt of approximately \$3,000. In exchange for the license, Moody will pay Debrine \$3,000 (Moody states that he has previously purchased the broadcast equipment of Debrine from Donrey), which will allow for satisfaction of the outstanding debt. Moody also contends that the assignment will serve the public interest by preserving the only full time AM station in Springdale, Arkansas. In support of this contention, Moody provides an engineering study by his consulting engineer which establishes that, under the Commission's current AM spacing rules, if Debrine's license for KBRs(AM) is revoked, no applications for the station would be accepted.

Discussion

5. In *Second Thursday* the Commission created an exception to its general rule that where there were character qualification issues pending against a renewal applicant, an assignment of license would not be granted prior to a resolution of those issues. *See Hertz Broadcasting of Birmingham, Inc.*, 57 FCC 2d 183, 184 (1976). Under this exception, the Commission will approve a transfer without a hearing on the issues when it is convinced that the alleged wrongdoer will derive no benefit, either direct or indirect, from the sale, or in the alternative, will derive only minor benefits which are outweighed by the equities in favor of the innocent creditors. In *Second Thursday* the Commission permitted the transfer of a station in hearing, where the licensee was in bankruptcy, based on its finding that there were "substantial equities in favor of innocent creditors and the public interest in the resumption of service." 25 FCC 2d at 115. The benefit to creditors was approximately \$115,000, most of which would have been lost had the renewal application been denied.

6. In the instant case, there does not appear to be any benefit to creditors to be obtained by approving the transfer. Moreover, there is no indication that Debrine is cur-

¹ Although the Commission included a *Notice of Apparent Liability* for willful or repeated violations of Commission rules, no forfeiture is being imposed because of the action taken

herein.

² Moody's assignment application includes an "Assignor's Certification" signed by Fred DeBrine, President of Debrine.

rently in bankruptcy. While Moody notes that there was a deficiency of \$3,000 after the sale of Debrine's assets in 1989, Donrey has apparently chosen not to pursue Debrine for this deficiency. Indeed, in a letter dated December 22, 1989, Donrey's attorney recommended that it would not be worth the effort to pursue a deficiency judgement. Thus, it appears that Donrey, the creditor, was satisfied as of December 1989 and that Moody has attempted to use the fact of Debrine's former indebtedness to create a scenario which would bring him within the *Second Thursday* doctrine, for his own interests. Under these circumstances, we will deny Moody's request for relief under the Commission's *Second Thursday* exception.

7. Moody's claim that the transfer is in the public interest because under the Commission's new rules an application for identical facilities to replace KBRS(AM) would not be acceptable, is not compelling. See *Review of the Technical Assignment Criteria for the AM Broadcast Service (Report and Order)*, 6 FCC Rcd 6273 (1991). As the Commission stated in its *Report and Order*, the new rules are part of "a comprehensive plan that will eventually achieve a significantly improved AM service." 6 FCC Rcd at 6273 (1991). Other than to note that the new rules would prohibit new applications for this station, Moody has not presented any basis for the waiver. See, *WALT Radio v. FCC*, 418 F. 2d 1153, 16 RR 2d 2107 (D.C. Cir. 1969) ("any waiver request must demonstrate with particularity the facts and circumstances which would warrant such action, and give affirmative reasons to justify a grant of the waiver in the public interest.").

8. Accordingly, IT IS ORDERED, that the license of Debrine Communications, Inc. for KBRS(AM), Springdale, Arkansas, IS REVOKED.³

9. IT IS FURTHER ORDERED, that Moody's request for relief pursuant to our *Second Thursday* doctrine is denied and his application for assignment of KBRS(AM) from Debrine to Elvis L. Moody IS DISMISSED, with prejudice.⁴

10. IT IS FURTHER ORDERED that the hearing proceeding in MM Docket 92-34, wherein Debrine Communications, Inc. was directed to show cause why its license for Station KBRS should not be revoked, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

³ The Commission has delegated authority to the Mass Media Bureau to process requests for relief pursuant to the *Second Thursday* policy. *NewSouth Broadcasting, Inc.*, 8 FCC Rcd 1272 (1993).

⁴ In *Radio Northwest Broadcasting Company*, 4 FCC Rcd 596

(1989) the Commission granted the Mass Media Bureau delegated authority in silent station cases to issue Orders of Revocation when the Presiding Judge makes a finding that, pursuant to Section 1.92(a) of our Rules, the licensee has waived its right to a hearing.